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State of New Jersey

BOARD OF PUBLIC UTILITIES
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NEWARK NJ 07102

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CHRISTINE TODD WHITMAN
Governor

EX PARTE OR LATE FILED

November 3, 1997

JAMES A. NAPPI
Secretary

Tel 201-648-3426
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William Caton, Acting Secretary
Federal Communications Commission
Office of the Secretary
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: CC Docket No. 96-45

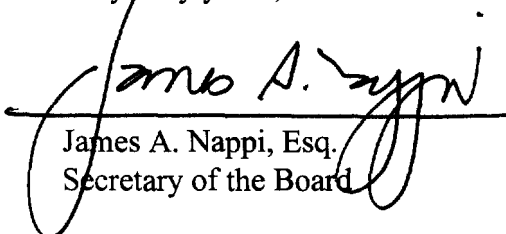
Dear Mr. Caton:

This letter serves as notice as to the New Jersey Board of Public Utilities' (Board) compliance with the Commission's requirements for eligibility for federal universal service support for schools and libraries in the state. This letter is in response to the Commission's September 29, 1997 Public Notice addressing "Procedures for States Regarding Lifeline Consents, Adoption of an Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers." Enclosed is the Board Order adopting the FCC's Discount Matrix as delineated in paragraph 520 of the FCC May 8, 1997 Order on Universal Service.

Additionally, the Board will submit a separate letter at a later time regarding the list of eligible telecommunications carriers since there are pending proceedings on requests for eligibility status before the Board. Further, the Board is currently conducting hearings on the Lifeline issue and has not yet made a determination on whether to approve a reduction in the portion of intrastate rate paid by the Lifeline Customer. The Board will advise the FCC when a determination is made at the conclusion of our proceeding.

If you should need further information, please do not hesitate to contact Michael Gallagher, Director of the Telecommunications Division at (201) 648-7695.

Very truly yours,


James A. Nappi, Esq.
Secretary of the Board

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Enclosure

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STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

AGENDA DATE: 4 2 97

TELECOMMUNICATIONS

IN THE MATTER OF THE INVESTIGATION)
REGARDING LOCAL EXCHANGE COMPETITION)
FOR TELECOMMUNICATIONS SERVICES)

SUMMARY ORDER ADOPTING
DISCOUNT MATRIX

DOCKET NO. TX95120631

(SERVICE LIST ATTACHED)

BY THE BOARD:

On December 8, 1995, the Board of Public Utilities (Board) initiated the investigation and rulemaking proceeding in this docket to determine whether or not to permit local exchange competition in New Jersey and, if so, under what terms and conditions. The Board's Prehearing Order in this matter dated August 7, 1996 (Prehearing Order), identified twelve policy issues and five fact issues to be addressed in this proceeding, the latter requiring testimony subject to cross-examination and the former to "be briefed at the conclusion of the hearings or as scheduled by the presiding Commissioner." Prehearing Order at 6. Among other policy issues set forth in the Prehearing Order, the Board directed the parties to address the following:

- (g) Universal Service Fund policy questions including:
 - (1) the Definition of Universal Service;
 - (2) the Need for a Universal Service Fund;
 - (3) who should contribute to and receive payments from the Fund;
 - (4) the impact of federal subsidy programs on the Fund;
 - (5) the effect of the Federal/State Joint Board on Universal Service rules upon the Board's determinations;
 - (6) questions regarding the creation of an "affordability benchmark" as the basis for making determinations regarding support from the Fund;
 - (7) the definition of "basic" services supported by the Fund and how the definition can be updated as needs and technology change; [and]
- (j) the Establishment of mandated discounts to schools, libraries and hospitals."

[Prehearing Order at 4-5.]

The Board designated these as policy issues to be addressed through briefs. See the scheduling memorandum dated October 10, 1996 issued on behalf of the presiding officer in this proceeding, Commissioner Carmen J. Armenti. Accordingly, the parties submitted initial and reply briefs on universal service policy issues "g" and "j" on December 9, 1996 and December 23, 1996, respectively.

As will be explained below, because of recent federal action related to discounts for schools and libraries, the intent of this Order is to articulate the Board's position on policy issue "j", the establishment of mandated discounts for schools and libraries.

I. Background

In passing the Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56 (codified at 47 U.S.C. §151 et seq.) (the Act), Congress directed the creation of a Federal-State Joint Board on Universal Service (Joint Board) and also directed the referral to the Joint Board by the Federal Communications Commission (FCC) of a proceeding to recommend changes in FCC universal service regulations. 47 U.S.C. §254(a). Congress charged the Joint Board and the FCC with preserving and advancing universal service based upon the following principles: (1) quality services available at just, reasonable and affordable rates; (2) access to advanced telecommunications and information services in all regions of the Nation; (3) access to telecommunications and information services to consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas; (4) that all telecommunications providers should make equitable and nondiscriminatory contributions to the preservation and advancement of universal service; (5) that there should be specific, predictable and sufficient federal and State mechanisms to preserve and advance universal service; (6) that elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services; and (7) such other principles which the Joint Board and FCC determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with the Act. 47 U.S.C. §254(b).

Congress defined universal service generally as an evolving level of telecommunications services that the FCC shall periodically establish taking into account advances in telecommunications and information technologies and services. 47 U.S.C. §254(c)(1). Congress directed that the Joint Board in recommending and the FCC in establishing the definition of the services to be supported by the federal universal service support mechanisms shall consider the extent to which such services (a) are essential to education, public health or safety; (b) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (c) are being deployed in public telecommunications networks by carriers; and (d) are consistent with the public interest, convenience and necessity. Ibid.

II. The Federal-State Joint Board Recommendation

Pursuant to the Act, on November 7, 1996 the Joint Board adopted a decision which, among other things, recommended a definition of universal service and a matrix of discounts to be made available to schools and libraries. See I/M/O Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket No. 96-45, FCC 96J-3 (released November 8, 1996) (hereinafter, the Recommendation).

With regard to support for schools and libraries, the Joint Board recommended that all eligible schools and libraries should receive discounts between 20% and 90% on all telecommunications services, Internet access and internal connections, subject to a \$2.25 billion annual cap. Recommendation at ¶¶9, 547-56. According to the Recommendation, any funds not disbursed in a given year may be carried forward and may be disbursed in subsequent years without regard to the cap. *Id.* at ¶556. The Joint Board concluded that economically disadvantaged schools and libraries, as well as schools and libraries located in high cost areas, should receive greater discounts to ensure affordable access. *Id.* at ¶¶9, 561. Also recommended to the FCC was the establishment of intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal service support for schools and libraries in the state. *Id.* at ¶573. According to the Recommendation, if a state wishes to provide an intrastate discount less than the federal discount, it may seek a waiver. *Ibid.* In addition, the Joint Board recommended that schools and libraries be required to comply with several self-certification requirements to ensure that only eligible entities receive universal support and that they have adopted plans for securing access to all of the necessary supporting technologies needed to use the services purchased under Section 254(h). *Id.* at ¶¶599-604.

III. Discussion

On May 8, 1997, the FCC released its Report and Order in I/M/O Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC Order No. 97-157 (Report and Order), implementing key provisions of Section 254 of the Act. Among other things, the Report and Order identified the services to be supported by federal universal service funding and the mechanism through which such funding will be provided. Importantly, the Report and Order adopted the Joint Board recommendation providing discounts for telecommunications services for eligible schools and libraries. More specifically, the FCC, in its Report and Order, adopted a discount matrix to be used for determining the benefits available to all schools and libraries. Report and Order at ¶520, 47 C.F.R. §54.505(c). The FCC also determined that applications for such discounts will be received by the federal universal fund administrator as early as July 1, 1997 and discounts for eligible services may be paid out of the federal fund as early as January 1, 1998. Report and Order at ¶539, 47 C.F.R. §§54.507(a) d). Moreover, the FCC determined that schools and libraries cannot receive discounts from the federal fund in the absence of state adoption of "intrastate discounts at least equal to the discounts on interstate service." Report and Order at ¶550. The FCC's rules clearly state that "[f]ederal universal service support for eligible schools and libraries in a state is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services. Report and Order at ¶550, 47 C.F.R. §54.505(e) (1).

The FCC's action compels the Board at this time to act to protect the ability of the State's schools and libraries to timely apply for and receive federal universal service support funding. Immediate action by the Board is particularly important given that support is available on a "first-come-first-served basis" and that only \$1 billion will be available to all the Nation's schools and libraries for the funding period January 1, 1998 through June 30, 1998. Report and Order at ¶529, 47 C.F.R. §§54.507(a)(c).

Therefore, for the purpose of permitting the schools and libraries of New Jersey to timely apply for and receive federal funding, the Board HEREBY ADOPTS the discount matrix set forth in the Report and Order at ¶520 and codified at 47 C.F.R. §54.505(c).

DATED: 6-27-97

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BY:


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PRESIDENT


CARMEN J. ARMENTI
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SECRETARY

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520. For purposes of administering the school lunch program, the Department of Education places schools in five categories, based on the percentage of students eligible for free or reduced-price lunches: 0-19 percent; 20-34 percent; 35-49 percent; 50-74 percent; and 75-100 percent.¹³⁵⁷ Consistent with the Joint Board's recommendation, we adopt the percentage categories used by the Department of Education for schools and libraries, and we also establish a separate category for the least economically disadvantaged schools and libraries, i.e., those with less than one percent of their students eligible for the national school lunch program.¹³⁵⁸ Schools and libraries in the "less than one percent" category should have comparatively greater resources within their existing budgets to secure affordable access to services even with lower discounted rates. We, therefore, adopt the following matrix for schools and libraries:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX		DISCOUNT LEVEL	
HOW DISADVANTAGED?		urban discount (%)	rural discount (%)
% of students eligible for national school lunch program ¹³⁵⁹	(estimated % of US schools in category)		
< 1	3	20	25
1-19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

521. We conclude that this approach fulfills our obligation to ensure that

¹³⁵⁷ See National Data Research Center (1995), *Schools and Staffing Surveys, 1993-94* (unpublished tabulations commissioned by the U.S. Department of Education for the National Assessment of Title I).

¹³⁵⁸ Recommended Decision, 12 FCC Rcd at 376.

¹³⁵⁹ Based on 1993 National Data Research Center data.